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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,392	08/01/2001	Christos Zouboulis	01895300	4392

26565 7590 12/01/2004

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EXAMINER

LANKFORD JR, LEON B

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/920,392	Applicant(s) ZOUBOULIS, CHRISTOS	
	Examiner Leon Lankford	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,23-38,40-42,44,45,47 and 63-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 23-38,40-42,44,45, 47 & 63-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 9/9/2004 have been fully considered but they are not persuasive. The claims remain rejected for the reasons of record.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant has made arguments which aren't commensurate in scope with the claims. For example, applicant makes the following arguments but the claims are significantly different in scope:

The objective problem underlying the present invention is to provide a human immortalized sebocyte culture having substantially the same properties as a primary sebocyte culture suitable for further investigations in the field of sebocyte-related human skin diseases. This problem is surprisingly solved by the inventive sebocytes.

Applicant's arguments have been considered however a showing to overcome a prima facie case of obviousness must be clear and convincing(*In re Lohr et al.* 137 USPQ 548) as well as commensurate in scope with the claimed subject matter (*In re Lindner* 173 USPQ 356; *In re Hyson*, 172 USPQ 399 and *In re Boesch et al.*, 205 USPQ 215 (CCPA 1980).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10, 23-38, 40-42, 44, 45, 47 & 63-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zouboulis et al (*Dermatology* 196) or Rosenfield (6004751) in view of Bryan (*Crit Rev Onc* 5(4)).

Zouboulis and Rosenfield teach cell cultures of sebocytes particularly taken from facial sebaceous glands. Zouboulis teaches cell culture of sebocytes dates to at least 1989. The references do not teach that the cells are immortalized, however at the time the invention was made, it would have been obvious to immortalize the sebocytes of Zouboulis and/or Rosenfield because Bryan clearly teaches that cells in culture can be immortalized by SV40 and motivates one of ordinary skill in the art to do so because of the obvious advantages for study of having a cell line which does not die off. The method is not exclusive to Bryan and has been done for decades in scores of cell types. Given the breadth and success in the art of immortalization via SV40 (and other known immortalization techniques), there was clearly a reasonable expectation of success for one of ordinary skill in the art at the time the invention was made to make an

immortalized human sebocyte cell line. It follows that the immortalized cell line, *per se*, would have been obvious at the time the invention was made.

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made especially in the absence of evidence to the contrary.

Conclusion

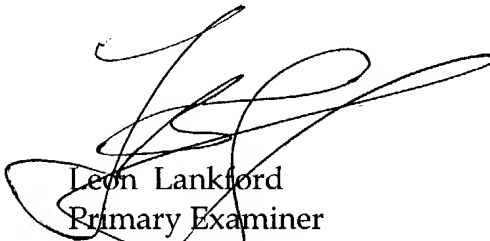
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Lankford whose telephone number is 571-272-0917. The examiner can normally be reached on Mon-Thu 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leon Lankford
Primary Examiner
Art Unit 1651

LBL